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FEDERAL COMMUNICATIONS COMMISSION

FCC 97-152

May 7 12 16 PM '97

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of

MOBILEMEDIA CORPORATION, et al.

Applicant for Authorizations and Licensee
of Certain Stations in Various Services

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WT DOCKET NO. 97-115

ORDER

Adopted: May 2, 1997 ;

Released: May 5, 1997

By the Commission:

1. This order denies the Wireless Telecommunications Bureau's Request for Clarification or Modification of Issue, filed April 11, 1997. The Presiding Judge certified this matter to the Commission. MobileMedia Corp., FCC 97M-55 (Apr. 17, 1997). The petition will be denied because the issue in question is clear on its face and the Bureau has not provided a basis for clarification or modification.

I. BACKGROUND

2. The Commission designated this proceeding for hearing after MobileMedia Corporation (MobileMedia) disclosed the results of an internal investigation concluding that MobileMedia had filed numerous false notifications with the Commission on FCC Form 489 and also filed a substantial number of defective "40-Mile Rule" applications. MobileMedia Corp., FCC 97-124 (Apr. 8, 1997). According to MobileMedia's own investigation, which had been conducted by outside counsel, these notifications falsely reported the construction of facilities that had not, in fact, been built. The October 15, 1996 report of the investigation also disclosed the identities of several members of senior management who participated in the deception. The Commission designated this matter following an investigation of the relevant facts and circumstances by the Wireless Telecommunications Bureau (Bureau).

3. Among the issues designated was one inquiring into the veracity of representations in the October 15 report of the investigation (FCC 97-124 at ¶ 14):

(b) to determine the facts and circumstances surrounding
MobileMedia's submission of its October 15, 1996, Report to the

Bureau (including, but not limited to, the identity of all persons who participated in the preparation of the Report and the nature and extent of their participation, including their intent) and whether MobileMedia knowingly made false statements, engaged in misrepresentations, lacked candor, or willfully or repeatedly violated Section 1.17 of the Commission's Rules with regard to the submission of the October 15, 1996, Report to the Bureau [emphasis added];

4. In its request for clarification, the Bureau questions the scope of the highlighted language. The Bureau states (Request at 2-3):

The issue as presently worded . . . appears to contemplate an inquiry which would include within its scope not only an examination of the representations, actions, and intent of MobileMedia's principals, but also of other persons including, for example, outside counsel, who may have participated in the preparation of the October 15, 1996, report.

The Bureau submits that, while the conduct of MobileMedia's principals is clearly relevant to MobileMedia's qualifications, the issue is ambiguous as to whether the Commission intends to inquire into the candor of nonprincipals. The Bureau does agree that there is a need for a full, complete, and robust inquiry into the facts and circumstances surrounding MobileMedia's submission of the October 15, 1996, Report (Request at ¶ 2), and, further, that "it may be necessary to adduce evidence from individuals other than MobileMedia's principals" with respect to this issue (Request at ¶ 3).

5. Under 47 C.F.R. § 1.294(c), any response by MobileMedia to the Bureau's request for clarification was due April 24, 1997. On April 21, MobileMedia filed with the ALJ a Motion for Extension of Time, which the ALJ informally referred to the Commission. See Florida-Georgia Television Co., Inc., 12 FCC 2d 332 (1968) (practice of referring misdirected pleadings). In its motion, MobileMedia requests an extension because it intends its response to be in the form of a motion to delete the designated issue and wishes to defer its response until the time period for filing such motions.

II. DISCUSSION

6. The Bureau has not provided a basis for clarifying or modifying the designated issue. The Commission's reference to "all persons" is clear. The Commission did not limit to MobileMedia's principals its inquiry into the facts and circumstances surrounding MobileMedia's Report. Moreover, the Bureau has provided no reason to so limit the inquiry. Although the conduct and intent of MobileMedia's principals will be the most relevant

consideration in determining the ultimate question of MobileMedia's qualifications, the nature and extent of participation by others (including outside counsel) in the preparation of the report, including their intent, is also relevant to creating a full record of the facts and circumstances bearing on this question. In this regard, we note that the adjudication of a licensee's qualifications has in other cases sometimes encompassed evidence regarding the participation of counsel in relevant matters. See, e.g., Fox Television Stations, Inc., 10 FCC Rcd 8452, 8491-92 ¶¶ 95-98 (1995) (subsequent history omitted); Nancy Naleskiewicz, 10 FCC Rcd 1083, 1092 ¶ 44 (1995), recon. denied, 10 FCC Rcd 7606 (1995); TeleSTAR, Inc., 3 FCC Rcd 2860, 2862 ¶ 19 (1988); A.S.D. Answer Service, Inc., 96 FCC 2d 886, 889-90 ¶ 9 (1984); Rainbow Broadcasting Co., FCC 97D-05 (ALJ 1997) at ¶¶ 6-39; Western Cities Broadcasting, Inc., FCC 96D-09 (ALJ 1996) at ¶ 130.

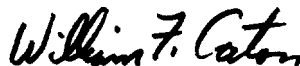
7. We deny the motion for extension of time. Motions for extension of time are not routinely granted. 47 C.F.R. § 1.46(a). Moreover, in this case the Commission has directed the Presiding Judge to "make every effort to conclude the case, including certifying the record to the Commission, within six months. . . ." FCC 97-124 (Apr. 8, 1997) at para. 15(a). MobileMedia's desire to file a motion to delete provides no basis to delay resolution of the Bureau's request. We note that the mere filing of a motion for extension of time does not toll the filing period in this context. Compare 47 C.F.R. § 1.46(b) (deferral of filing period in rulemakings) with 47 C.F.R. § 1.46(c) (other motions for extension of time).

III. ORDERING CLAUSE

8. ACCORDINGLY, IT IS ORDERED, That the Wireless Telecommunications Bureau's Request for Clarification or Modification of Issue, filed April 11, 1997, IS DENIED.

9. IT IS FURTHER ORDERED, That the Motion for Extension of Time, filed April 21, 1997, by MobileMedia Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary